Christian T. Nygren, Esq.
MILODRAGOVICH, DALE,
STEINBRENNER & NYGREN, P.C.
620 High Park Way
P.O. Box 4947
Missoula, Montana 59806-4947
Telephone: (406) 728-1455
Telefax: (406) 549-7077
Email: nygren@bigskylawyers.com
Attorneys for Defendants

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DAVID K. MANN, individually; ELIZABETH S. MANN; DELANEY MANN; and M.H.M., MINOR CHILD BY AND THROUGH HER FATHER AND NEXT FRIEND, DAVID K. MANN, Plaintiffs, -vs- REDMAN VAN & STORAGE CO., INC.; and ROWDY B. ANDERSON, Defendants.	CV-10-128-M-DWM-JCL **DEFENDANTS' ANSWER TO COMPLAINT AND DEMAND FOR JURY TRIAL**

COMES NOW Defendants, Redman Van & Storage Co., Inc.; and Rowdy B. Anderson, by and through counsel of record, and hereby provide their Answer to Plaintiffs' Complaint as follows:

FIRST AFFIRMATIVE DEFENSE

The Complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

These answering Defendants deny each and every allegation of the Complaint herein not specifically and expressly admitted. Such denials may be due to the fact that Defendants lack sufficient information to affirm or deny the allegations made and therefore deny the same.

I. INTRODUCTION

1. In answering Paragraph 1 of the Complaint, based upon information and belief, Defendants admit the allegations contained in Paragraph 1.

II. PARTIES

2. In answering Paragraph 2 of the Complaint, Defendants admit the allegations contained in Paragraph 2 of the Complaint.

3. In answering Paragraph 3 of the Complaint, Defendants affirmatively assert that the allegations contained in Paragraph 3 are all legal conclusions and therefore neither admit or deny such allegations.

4. In answering Paragraph 4 of the Complaint, Defendants admit Rowdy B. Anderson is a Montana resident but deny the remaining allegations contained in Paragraph 4 of the Complaint.

5. In answering Paragraph 5 of the Complaint, Defendants admit that Defendant Anderson was working as a driver for Defendant Redman Van and deny any remaining allegations contained in Paragraph 5 of the Complaint.

6. In answering Paragraph 6 of the Complaint, Defendants admit that the acts and omissions alleged occurred while Defendant Anderson was driving on behalf of Defendant Redman Van and deny the remaining allegations contained in Paragraph 6 of the Complaint.

7. In answering Paragraph 7 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 7.

8. In answering Paragraph 8 of the Complaint, Defendants are without sufficient information to admit or deny such allegations contained in Paragraph 8.

III. JURISDICTION AND VENUE

9. In answering Paragraph 9 of the Complaint, Defendants are without sufficient information to admit or deny the allegations in regard to controversy contained in Paragraph 9 of the Complaint.

10. In answering Paragraph 10 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 10 of the Complaint based on knowledge of the alleged claim amount in controversy.

IV. FACTS COMMON TO ALL CAUSES OF ACTION

11. In answering Paragraph 11 of the Complaint, Defendants deny the allegations contained in Paragraph 11 of the Complaint and affirmatively assert that Plaintiffs ran their vehicle into Defendants' vehicle as indicated by the physical evidence at the crash scene.

12. In answering Paragraph 12 of the Complaint, Defendants deny the allegations contained in Paragraph 12 of the Complaint.

13. In answering Paragraph 13 of the Complaint, Defendants deny the allegations contained in Paragraph 13 of the Complaint.

14. In answering Paragraph 14 of the Complaint, Defendants deny the allegations that Defendant Anderson turned suddenly and without warning and that Plaintiffs attempted to lawfully pass Defendant Anderson. Defendants admit the allegations that both vehicles were traveling southbound on Rocky Point Road.

15. In answering Paragraph 15 of the Complaint, Defendants deny the allegations contained in Paragraph 15 of the Complaint.

16. In answering Paragraph 16 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 16 of the Complaint.

17. In answering Paragraph 17 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 17 of the Complaint.

18. In answering Paragraph 18 of the Complaint, Defendants deny the allegations contained in Paragraph 18.

19. In answering Paragraph 19 of the Complaint, Defendants deny the allegations contained in Paragraph 19 of the Complaint.

20. In answering Paragraph 20 of the Complaint, Defendants deny the allegations contained in Paragraph 20 of the Complaint.

21. In answering Paragraph 21 of the Complaint, Defendants deny the allegations of a sudden left turn and deny the remaining allegations contained in Paragraph 21 of the Complaint.

22. In answering Paragraph 22 of the Complaint, Defendants deny the allegations contained in Paragraph 22 of the Complaint.

23. In answering Paragraph 23 of the Complaint, Defendants deny the allegations contained in Paragraph 23 of the Complaint.

24. In answering Paragraph 24 of the Complaint, Defendants deny the allegations contained in Paragraph 24 of the Complaint.

25. In answering Paragraph 25 of the Complaint, Defendants deny the allegations contained in Paragraph 25 of the Complaint.

26. In answering Paragraph 26 of the Complaint, based on information and belief, Defendants admit the allegations contained in Paragraph 26 of the Complaint.

27. In answering Paragraph 27 of the Complaint, Defendants admit the allegations contained in Paragraph 27 of the Complaint.

28. In answering Paragraph 28 of the Complaint, Defendants admit making a left hand turn and specifically admit that Defendant Anderson was driving on behalf of Defendant Redman Van.

29. In answering Paragraph 29 of the Complaint, based on information and belief, Defendants admit the allegations contained in Paragraph 29 of the Complaint.

30. In answering Paragraph 30 of the Complaint, based on information and belief, Defendants admit the allegations contained in Paragraph 30 of the Complaint.

31. In answering Paragraph 31 of the Complaint, based on information and belief, Defendants admit the allegations contained in Paragraph 31 of the Complaint.

32. In answering Paragraph 32 of the Complaint, Defendants deny the allegations contained in Paragraph 32 of the Complaint.

33. In answering Paragraph 33 of the Complaint, Defendants deny the allegations contained in Paragraph 33 of the Complaint and affirmatively state that Plaintiffs were not passing lawfully at the time of the accident.

34. In answering Paragraph 34 of the Complaint, Defendants deny the allegations contained in Paragraph 34 of the Complaint.

V. FIRST CAUSE OF ACTION - ALL PLAINTIFFS NEGLIGENCE AGAINST DEFENDANT REDMAN VAN

35. In answering Paragraph 35 of the Complaint, Defendants incorporate responses to the previous allegations.

36. In answering Paragraph 36 of the Complaint, Defendants deny the allegations contained in Paragraph 36 of the Complaint.

37. In answering Paragraph 37 of the Complaint, Defendants affirmatively state there was no negligence and deny the allegations contained in Paragraph 37 of the Complaint.

38. In answering Paragraph 38 of the Complaint, Defendants deny the allegations contained in Paragraph 38 of the Complaint.

39. In answering Paragraph 39 of the Complaint, Defendants deny the allegations contained in Paragraph 39 of the Complaint.

40. In answering Paragraph 40 of the Complaint, Defendants deny the allegations contained in Paragraph 40 of the Complaint.

VI. SECOND CAUSE OF ACTION - ALL PLAINTIFFS NEGLIGENCE AGAINST DEFENDANT ANDERSON

41. In answering Paragraph 41 of the Complaint, Defendants incorporate their responses to the previous allegations.

42. In answering Paragraph 42 of the Complaint, Defendants deny the allegations contained in Paragraph 42 of the Complaint.

43. In answering Paragraph 43 of the Complaint, Defendants deny the allegations contained in Paragraph 43 of the Complaint.

44. In answering Paragraph 44 of the Complaint, Defendants deny the allegations contained in Paragraph 44 of the Complaint.

45. In answering Paragraph 45 of the Complaint, Defendants deny the allegations contained in Paragraph 45 of the Complaint.

VII. THIRD CAUSE OF ACTION - PLAINTIFFS KELLY & ELIZABETH MANN LOSS OF SPOUSAL CONSORTIUM AGAINST DEFENDANTS REDMAN VAN & ANDERSON

46. In answering Paragraph 46 of the Complaint, Defendants incorporate their responses to the previous allegations.

47. In answering Paragraph 47 of the Complaint, Defendants deny the allegations contained in Paragraph 47 of the Complaint.

48. In answering Paragraph 48 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 48 of the Complaint.

49. In answering Paragraph 49 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 49 of the Complaint.

50. In answering Paragraph 50 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 50 of the Complaint.

VIII. FOURTH CAUSE OF ACTION - PLAINTIFFS KELLY & ELIZABETH MANN
LOSS OF FILIAL CONSORTIUM
AGAINST DEFENDANTS REDMAN VAN & ANDERSON

51. In answering Paragraph 51 of the Complaint, Defendants incorporate their responses to the previous allegations.

52. In answering Paragraph 52 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 52 of the Complaint.

53. In answering Paragraph 53 of the Complaint, Defendants deny the allegations contained in Paragraph 53 of the Complaint.

54. In answering Paragraph 54 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 54 of the Complaint.

55. In answering Paragraph 55 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 55 of the Complaint.

IX. FIFTH CAUSE OF ACTION - PLAINTIFFS DELANEY MANN AND M.H.M. LOSS OF PARENTAL CONSORTIUM AGAINST DEFENDANTS REDMAN VAN & ANDERSON

56. In answering Paragraph 56 of the Complaint, Defendants incorporate their responses to the previous allegations.

57. In answering Paragraph 57 of the Complaint, Defendants deny the allegations contained in Paragraph 57 of the Complaint.

58. In answering Paragraph 58 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 58 of the Complaint.

59. In answering Paragraph 59 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 59 of the Complaint.

60. In answering Paragraph 60 of the Complaint, Defendants deny the allegations contained in Paragraph 60 of the Complaint.

61. In answering Paragraph 61 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 61 of the Complaint.

X. SIXTH CAUSE OF ACTION - ALL PLAINTIFFS ACTUAL MALICE AGAINST DEFENDANTS REDMAN VAN AND ANDERSON

62. In answering Paragraph 62 of the Complaint, Defendants incorporate their responses to the previous allegations.

63. In answering Paragraph 63 of the Complaint, Defendants deny the allegations contained in Paragraph 63 of the Complaint.

64. In answering Paragraph 64 of the Complaint, Defendants deny the allegations contained in Paragraph 64 of the Complaint.

65. In answering Paragraph 65 of the Complaint, Defendants deny the allegations contained in Paragraph 65 of the Complaint.

66. In answering Paragraph 66 of the Complaint, Defendants deny the allegations contained in Paragraph 66 of the Complaint.

67. In answering Paragraph 67 of the Complaint, Defendants deny the allegations contained in Paragraph 67 of the Complaint.

68. In answering Paragraph 68 of the Complaint, Defendants deny the allegations contained in Paragraph 68 of the Complaint.

XI. DAMAGES

69. In answering Paragraph 69 of the Complaint, Defendants incorporate their responses to the previous allegations.

70. In answering Paragraph 70 of the Complaint, Defendants deny the allegations contained in Paragraph 70 of the Complaint.

71. In answering Paragraph 71 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 71 of the Complaint.

72. In answering Paragraph 72 of the Complaint, Defendants deny the allegations contained in Paragraph 72 of the Complaint.

73. In answering Paragraph 73 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 73 of the Complaint.

74. In answering Paragraph 74 of the Complaint, Defendants deny the allegations contained in Paragraph 74 of the Complaint.

75. In answering Paragraph 75 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 75 of the Complaint.

76. In answering Paragraph 76 of the Complaint, Defendants deny the allegations contained in Paragraph 76 of the Complaint.

77. In answering Paragraph 77 of the Complaint, Defendants are without sufficient information to admit or deny the allegations contained in Paragraph 77 of the Complaint.

78. In answering Paragraph 78 of the Complaint, Defendants deny the allegations contained in Paragraph 78 of the Complaint.

79. In answering Paragraph 79 of the Complaint, Defendants deny the allegations contained in Paragraph 79 of the Complaint.

THIRD AFFIRMATIVE DEFENSE

These answering Defendants deny the allegations of negligence and any other blameworthy or wrongful conduct.

FOURTH AFFIRMATIVE DEFENSE

Damages, if any, as alleged by the Plaintiffs were caused by the superceding intervening conduct of other entities, including but not limited to, other parties than these answering Defendants.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs assumed the risk of the events, occurrences, and damages alleged in Plaintiffs' Complaint by their actions at the time of the accident.

SIXTH AFFIRMATIVE DEFENSE

The injuries of which Plaintiffs complain were caused in whole or in part by the Plaintiffs themselves and these answering Defendants are entitled to the benefits of Mont. Code Ann. § 27-1-701, et. seq.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails to state a claim for relief against these answering Defendants entitling Plaintiffs to either punitive damages or equitable relief.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs lack capacity to maintain all causes of actions asserted in their Complaint.

NINTH AFFIRMATIVE DEFENSE

Plaintiffs' damages, if any, were proximately caused by the superceding intervening negligence or actions of other third-persons, and any negligence or breach of duty on the part of these answering Defendants, if any, was not a proximate cause of the alleged loss to the Plaintiffs. In asserting this defense, these answering Defendants do not admit negligence and to the contrary deny all allegations of negligence or other blameworthy conduct.

TENTH AFFIRMATIVE DEFENSE

These answering Defendants affirmatively allege that it has not completed discovery in this case and therefore reserve the right to amend their Answer to add additional affirmative defenses, allegations, and counterclaims once discovery is completed.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs are barred from recovery in whole or in part for their failure to mitigate damages.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiffs are guilty of negligent and careless misconduct the conduct and in connection with the matters and damages alleged which misconduct on their part proximately caused and contributed to said events and resulted in damages, if any.

THIRTEENTH AFFIRMATIVE DEFENSE

Defendants vigorously contest Plaintiffs' claim of damages.

FOURTEENTH AFFIRMATIVE DEFENSE

These answering Defendants affirmatively allege they have not completed discovery in this case and therefore reserve the right to amend their Answer to add additional affirmative defenses, allegations, counterclaims, and third-party claims once discovery is completed.

FIFTEENTH AFFIRMATIVE DEFENSE

At this time, these answering Defendants are uncertain what affirmative defenses may apply if this case goes to trial. Discovery, trial preparation, and the facts of this case may make some of the affirmative defenses inapplicable and thus are being raised in Defendants' Answer to avoid being waived. These answering Defendants will dismiss any affirmative defenses at the pretrial conference that do not appear to be reasonably supported by the facts and/or law. The purpose of raising these affirmative defenses is not to create defenses where none exist.

WHEREFORE, Defendants pray that:

1. Plaintiffs take nothing in this action;

2. That Plaintiffs' Complaint be dismissed;

3. That Defendants be awarded costs of defending against such Complaint; and

4. For such other and further relief as the Court deems just and proper.

TRIAL BY JURY

Defendants demand a trial by jury.

DATED this 30th day of December, 2010.

By: /s/ Christian T. Nygren
Christian T. Nygren
MILODRAGOVICH, DALE,
STEINBRENNER & NYGREN, P.C.
Attorneys for Defendants

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